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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR      | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|---------------------------|---------------------|------------------|
| 10/678,865   | 10/03/2003  | Kenneth J. Muderlak       | 11758/213           | 1300             |
| 7590 01/11/2006  |             |                           |                     |                  |
| Adam D. Airhart<br>Brinks Hofer Gilson & Lione<br>NBC Tower, Suite 3600<br>P.O. Box 10395<br>Chicago, IL 60610 |             | EXAMINER<br>HUYNH, KHOA D |                     |                  |
|  |             | ART UNIT PAPER NUMBER     |                     |                  |
|  |             | 3751                      |                     |                  |
| DATE MAILED: 01/11/2006  |             |                           |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                      |  |
|------------------------------|------------------------|----------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>  |  |
|                              | 10/678,865             | MUDERLAK, KENNETH J. |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>      |  |
|                              | Khoa D. Huynh          | 3751                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03/31/05 & 10/28/05.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 10/03/03 & 3/31/05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/19/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the horizontally rotatable lever as recited in claim 1 and the locking configuration by rotating the claim 180 degrees must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: a locking configuration by rotating the clamp 180 degrees as recited in claim 4.

***Claim Objections***

3. Claim 4 is objected to because of the following informalities: the recitation "can be changed" should be replaced with --is changed--. Appropriate correction is suggested.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the recitation "a clamp for mounting a housing on a component in the toilet tank" is inferentially included as part of the claimed combination of elements and therefore render claim 1 indefinite. Should applicant intend the above-mentioned recitation to be positive element of the claimed combination, then antecedent basis should be provided therefor. Also, claim 1 calls for "a horizontally rotatable lever". Such recitation also render claim 1 indefinite since such limitation (a) does not have any support in the original specification and (b) is not accurate. As best understood from the

original specification, the lever 121 should rotate vertically (or at least in the direction that is parallel with the X-axis) when being pushed upwardly by element 175. Therefore, it is unclear how the lever 121 is capable of rotating horizontally as claimed.

Claims 2-12 depend on claim 1 and are likewise indefinite.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 2, as presently understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Veal (6618864).

Regarding claim 1, the Veal reference discloses an automatic flushing actuator system for a toilet having the claimed features including a sensor (sensor arrangement 26) that detects the presence of an occurrence, a receiver (printed circuit board 90) coupled to the sensor (26), the receiver (90) being disposed in a housing (note the housing closure for actuator 60 in Fig. 7 and its internal components as shown in Fig. 8A) having a base (the portion adjacent element 86 in Fig. 8B) and a cover (the portion in which elements 97 and 100 connected to in Fig. 8B), the cover having a horizontally rotatable lever (100) mounted thereon (Fig. 8B schematically shows the lever 100 is pivotally mounted

to the cover via element 97 & 102), a gear and motor mechanism (Fig. 8B) connected to the receiver, the gear and motor mechanism having a cam (92) that engages an actuator rod (constituted by cam follower 97) which is in contact with the lever 100 (note Fig. 8B), and a clamp (86,88) mounting the housing 60 on a component (constituted by the overflow tube 62) in the toilet tank 20.

Regarding claim 2, as schematically shown in Figure 8B, the clamp is removably mounted to the housing.

Regarding claim 3, the clamp is permanently mounted (via the screws as schematically shown in Figure 7) to prevent removal of the housing.

Regarding claim 4, as schematically shown in Fig. 8B, the clamp is inherently capable of being rotated 180 degrees depending on the clamping position required, and the clamp is locked in a locking configuration by a locking mechanism (at 89).

Regarding claim 5, an insert (at 89) is configured for placement inside the clamp.

Regarding claims 6 and 7, the component is an overflow pipe (62), and the clamp is affixed to the overflow pipe.

Regarding claim 8, a turret (at 94) is on the upper portion of the cover (Fig. 8B).

Regarding claims 9-11, a lever assembly (at 93) couples the lever (100) to the turret (94). The turret has serrations (constituted by the teeth of element 94) which engage the serrations (constituted by the teeth of element 93) on the inner

surface of the lever assembly when that lever (100) is rotated (Fig. 8C) thereby locking the lever assembly in a desired position.

Regarding claim 12, the Veal reference additionally discloses that the receiver is wirelessly coupled to the sensor (note lines 34-40 in col. 5 and lines 13-21 in col. 9).

Regarding claims 13, Regarding claim 1, the Veal reference discloses an automatic flushing actuator system for a toilet having the claimed features including a housing (note the housing closure for actuator 60 in Fig. 7 and its internal components as shown in Fig. 8A) having a base (the portion adjacent element 86 in Fig. 8B) and a cover (the portion in which elements 97 and 100 connected to in Fig. 8B), the cover having a horizontally rotatable lever (100) mounted thereon (Fig. 8B schematically shows the lever 100 is pivotally mounted to the cover via element 97 & 102).

Regarding claims 14 and 15, guide rails (constitute by the tabs of element 88 in Figure 7) coupled to the slidably receivable clamp (88) of the housing 60. The clamp (88) is removably mounted to the housing.

Regarding claim 16, as schematically shown in Fig. 8B, the clamp is inherently capable of being rotated 180 degrees depending on the clamping position required, and the clamp is locked in a locking configuration by a locking mechanism (at 89).

***Response to Amendment***

8. Applicant's amendment, filed on 03/31/2005 & 10/28/05, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

***Response to Arguments***

9. Applicant's arguments filed on 03/31/05 & 10/28/05 with respect to the pending claims have been fully considered. However, such arguments are deemed not persuasive.

Applicant asserts neither the Veal nor the Kleiser, Jr. teaches a horizontally rotatable lever as claimed in the amended claims. See the Remarks section, pages 12-13 (filed on 03/31/2005). The Examiner is respectfully traversed.

Firstly, the recitation "a horizontally rotatable lever" is inaccurate since the lever 121 is rotated vertically or in a direction that is parallel to the x-axis. Therefore, the recitation renders the claim(s) indefinite.

And lastly, assume a standing position in front of the Veal tank, one would conclude that the counterclockwise rotation of lever 100 is a horizontally rotatable direction, then the Veal reference does teach a lever 100 that is horizontally rotatable. Thus, the Veal reference suggests a horizontally rotatable lever as claimed in the amended claims.

Also, applicant's arguments with respect to other pending claims have been considered but are moot in view of the new grounds of rejection as discussed supra.



***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and could be used to formulate rejections if needed.

11. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', with a long horizontal flourish extending to the right.

Khoa D. Huynh  
Primary Examiner  
Art Unit 3751

HK  
01/09/2006